



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: July 8, 2016

TO: Bruce Hoesly, Legislative Reference Bureau
1 East Main Street, Suite 200

FROM: Ben Brancel, Secretary

SUBJECT: Bulk Milk Tanker Permitting Regulations (Clearinghouse Rule # 15 - 094)

The Department of Agriculture, Trade and Consumer Protection (“Department”) hereby submits the following rule for publication:

CLEARINGHOUSE RULE #: 15-094

SUBJECT: Bulk Milk Tanker Permitting Regulations

ADM. CODE REFERENCE: ATCP 82

DATCP DOCKET #: 15-R-07

We are enclosing a copy of the final rule, as adopted by the Department. We are also providing the following information for publication with the rule, as required by s. 227.114(6), Stats.

Business Impact Analysis Summary

In the past, Wisconsin required the owner of a bulk milk tanker used to transport grade “A” milk and milk products to hold both a license and a Grade “A” permit for that tanker. The Department charged a licensing fee of \$45 and issued a Grade “A” permit as an endorsement on the license. 2015 Wisconsin Act 55 revised s. 97.21, Stats., eliminating bulk milk tanker licensing and license fee requirements and aligned Wisconsin with most other states by removing the requirement that bulk milk tanker operators hold both a tanker license and a grade “A” permit. This rule continues the alignment of Wisconsin with other states by maintaining the requirement that a Wisconsin Grade “A” permit cannot be issued to a bulk milk tanker unless that tanker has passed an inspection by the Department or a Wisconsin certified industry inspector within the preceding 24 months. Reciprocity of the Grade “A” bulk milk tanker permit is required by the US Food and Drug Administration’s Pasteurized Milk Ordinance (PMO), a cooperative agreement that governs the interstate shipment of Grade “A” milk and milk products and is the basis of each state’s Grade “A” milk requirements. Therefore, the rule indicates that bulk milk tankers hauling Grade “A” milk and dairy products in Wisconsin must hold a Grade “A” permit issued by the Department or the appropriate regulatory agency in another state. The Department incorporated these revisions into ATCP 82 to reflect these recent statutory and PMO changes and remain consistent with the PMO.

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This rule also adopts a modest increase in the bulk milk tanker reinspection fee, so that it covers Department costs. Reinspections are conducted by the Department to verify that appropriate corrective actions have been taken, after an initial inspection indicates a bulk milk tanker does not meet one or more regulatory requirements. In 2014, only 13 tankers required reinspection. The proposed rule increases the reinspection fee from \$45 to \$60.

Reporting, Bookkeeping and other Procedures

The proposed rule would not require any additional reporting, bookkeeping or other procedures.

Professional Skills Required

The proposed rule does not require any new professional skills by small businesses.

Accommodation for Small Business

All Grade “A” dairy businesses, large or small, must meet regulations that are substantially in compliance with the FDA’s PMO in order to collect, sample, and transport grade “A” milk and milk products. The PMO allows for no special provisions or accommodations for small businesses. This rule benefits those dairy producers, dairy plants, and companies that operate bulk milk tankers by eliminating licensing fees. Many of those affected are small businesses. This rule includes a modest increase in the reinspection fee from \$45 to \$60, to cover the current cost of reinspection. This fee would only be charged if the Department finds a regulatory violation necessitating corrective action and a reinspection. In 2014, only 13 owners of bulk milk tankers were charged a reinspection fee.

Conclusion

The provisions in this proposed rule will benefit Wisconsin’s dairy industry by eliminating bulk milk tanker licensing and license fee requirements and aligning Wisconsin with most other states by removing the requirement that bulk milk tanker operators hold both a tanker license and a grade “A” permit.

This rule will not have a significant adverse effect on “small business” and is not subject to the delayed “small business” effective date provided in s. 227.22(2)(e), Stats. The Department will, to the maximum extent feasible, seek voluntary compliance with this rule.

Comments from Legislative Committees Summary

The completed rule was submitted to the legislature for review on March 22, 2016. The rule was assigned to the Assembly Committee on Agriculture and the Senate Committee on Agriculture, Small Business and Tourism. Neither committee took action. The Senate referred the rule to the Joint Committee for Review

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Legislative Reference Bureau
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of Administrative Rules (JCRAR) on May 31, 2016, and the Assembly referred it to JCRAR on May 19, 2016. JCRAR also took no action on the rule.